

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/28/11

(In the space above enter the full name(s) of the plaintiff(s).)

**AMENDED
COMPLAINT**

under the

Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)

-against-

THE STATE OF NEW YORK, AND THE NEW YORK
STATE DEPARTMENT OF CORRECTIONS, THE CITY
OF NEW YORK, AND THE NEW YORK CITY
DEPARTMENT OF CORRECTIONS, NEW YORK
POLICE DEPARTMENT, 45TH PRECINCT, JAMES
CHRISTOS, HECTOR PEREZ, MICHAEL BRUESTLE,
ABRAHAM GARCIA, JOHN DOE-ARRESTING
OFFICER-I.D. # 897451 ARREST # B03611914,

Jury Trial: ☒ Yes ☐ No
(check one)

10 Civ. 1315 (LAP) (RWS)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name Gaetano D'Atto

ID # 10A5728

Current Institution UPSTATE CORRECTIONAL FACILITY

Address P.O. Box 2001, Malone, New York 12953

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name THE STATE OF NEW YORK Shield # N/A
Where Currently Employed ATTORNEY GENERAL, OFFICE OF THE
Address ATTORNEY GENERAL, CAPITOL BUILDING, Albany,
New York 12224

Defendant No. 2 Name NYS DEPT. OF CORRECTIONS Shield # N/A
Where Currently Employed THE HARRIMAN STATE CAMPUS /UPSTATE C.F.
Address 1220 Washington Avenue - Building 2
Albany, New York 12226-2050

Defendant No. 3 Name THE CITY OF NEW YORK Shield # N/A
Where Currently Employed CORPORATION COUNSEL/LAW DEPT.
Address 100- Church Street, New York, NY 10007

Defendant No. 4 Name NYC DEPT. OF CORRECTION'S Shield # N/A
Where Currently Employed 75-20 Astoria Boulevard, East
Address Elmhurst, New York 11370

Defendant No. 5 Name NEW YORK POLICE DEPARTMENT Shield # N/A
Where Currently Employed 45th Precinct, 2877 Berkley Ave,
Address Bronx, NY 10465 / One Police Plaza, N.Y.C. 10038

See "ATTACHED LIST" (2a)

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. In what institution did the events giving rise to your claim(s) occur?
NYC Police Dept., 45th Precinct / BRONX SUPREME COURT /
NYC DEPT. OF CORRECTIONS / NYS DEPT. OF CORRECTIONS
- B. Where in the institution did the events giving rise to your claim(s) occur?
INTAKE / PART-60, PART-TP-22 / RIKERS ISLAND INTAKE / DOWNSTATE
CORRECTIONAL FACILITY RECEPTION

"ATTACHED LIST"

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 6 Name JAMES CHRISTOS Shield # N/A 9544
 Where Currently Employed NEW YORK POLICE DEPARTMENT
 Address 45th PRECENT, 2877 BARKLEY AVENUE,
BRONX, NEW YORK 10465

Defendant No. 7 Name HECTOR PEREZ (Sergeant) Shield # N/A
 Where Currently Employed NEW YORK POLICE DEPARTMENT
 Address 45th PRECENT, 2877 BARKLEY AVENUE,
BRONX, NEW YORK 10465

Defendant No. 8 Name MICHAEL BRUESTLE Shield # N/A
 Where Currently Employed NEW YORK POLICE DEPARTMENT
 Address 1 Police Plaza, N.Y.C. 10038

Defendant No. 9 Name ABRAHAM GARCIA (COMMAND-FIU) Shield # N/A
 Where Currently Employed GUN STOPPERS PROGRAM, NEW YORK
 Address POLICE DEPARTMENT- 1 Police Plaza, N.Y.C.
10038
JOHN DOE-ARREST # B03611914

Defendant No. 10 Name ARRESTING OFFICER-I.D. #897451 Shield # N/A 897451
 Where Currently Employed NEW YORK POLICE DEPARTMENT
 Address 45th PRECENT, 2877 BARKLEY AVENUE,
BRONX, NEW YORK 10465

~~H. Statement of Claim:~~

~~State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.~~

- ~~A. In what institution did the events giving rise to your claim(s) occur?~~

- ~~B. Where in the institution did the events giving rise to your claim(s) occur?~~

C. What date and approximate time did the events giving rise to your claim(s) occur?

April 12, 2007, at approx. 11:00 PM / JUNE 21, 2007, at approx. 10:00 AM
 April 14, 2007, at approx. 7:00 AM / December 8, 2010, at approx.
 3:00 PM.

D. Facts: Arrested unlawfully, illegally, Detained unlawfully, illegally,
 Convicted and Sentenced unlawfully, illegally, Major physical injuries
 to head, neck, back, body, mental anguish.

What
happened
to you?

Who did
what?

Was
anyone
else
involved?

Arresting officer-I.D. # 897451 (Caucasian Male) tried to kill me,
 NYPD, 45th Precinct detectives broke into my home illegally, unlawfully,
 with no search warrant/no arrest warrant/no exigent circumstances-
 Specifically, JAMES CHRISTOS, HECTOR PEREZ / Police Officer MICHAEL
 BLUESTLE falsified, forged voucher documents, committed perjury, so
 ABRAHAM GARCIA broke into my home, with no consent/search, arrest warrant
 Detective ABRAHAM GARCIA, BRONX DISTRICT ATTORNEYS OFFICE,
 OMAR WICZYK, JOHN P. COLLINS, STEVEN L. BARRETT, CASSANDRA
 A. MULLEN, NORMA SILVA DA CONCEICAO, LAURA ANN STEINHOFF

Who else
saw what
happened?

NYC DEPT. OF CORRECTIONS PERSONNEL / COURT PERSONNEL /
 NYS DEPT. OF CORRECTIONS PERSONNEL / COURT PERSONNEL /
 LARRY SHEEHAN / ELISA ALBO / SARAH (MARIA) TOBIA /
 MARC DEMARCO / RICHARD W. BARTON / NYPD PERSONNEL,
 OFFICERS FROM THE 45th PRECINCT POLICE / LAURA ANN STEINHOFF /
 NORMA SILVA DA CONCEICAO / KRISTEN DELANO / DOUG TUCCI,
 JOHN DOE - (BILLY) Description- Caucasian Male, approx. 5'10", approx
 175 lbs., approx. 28 yrs. old, shoulder length dirty blonde hair, clean shaven,
 rock marked face, brown eyes, alot of acne, fair skinned, no criminal
 record, friend of Brian Kearney.

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

MENTAL ANGUISH, EMBARRASSMENT,
 DEPRESSION, ANGER, FRUSTRATION, HEIGHTENED ANXIETY, FEAR,
 NIGHTMARES, SLEEPLESSNESS, RESTLESSNESS, WORRISOME,
 STRESS, DURESS, MEDICAL DEPRIVATION, ASCERBATION OF PRIOR
 INJURIES TO HEAD, NECK, BACK, LEG/FOOT, NERVES (SEVERE SHOCK)
 AND TO NERVOUS SYSTEM / LACERATION(S) TO HEAD

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

AMKC/CBCC/
NYC D.D.C. Rikers Island - VCBC/GMDC/GRVC/NIC/BRONX SUPREME COURT/
NYS D.D.C. DOWNSTATE C.F./WALSH R.M.U./FIVE POINTS C.F./UPSTATE C.F./NYPD, 45th
PRECINCT

- B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

- C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☐ Do Not Know ☒

If YES, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☒ No ☐

- E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

GOVERNOR'S OFFICE/ATTORNEY GENERAL/NYS COURT OF CLAIMS/
USDC/SDNY/BRONX DISTRICT ATTORNEY'S OFFICE/3d DEPT. OF CORRECTIONS
1. Which claim(s) in this complaint did you grieve? ALL

2. What was the result, if any? PENDING

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. US C.O.A./USDC/SDNY-WRITE OF HABEAS CORPUS-NO RESPONSE.

- F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: N/A

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:
ALL STATE AGENCIES BY LETTER/MOTIONS IN 2007/08/09/10/11
NYS DIVISION OF PAROLE/NYS COURT OF CLAIMS/
LEGAL AID SOCIETY/INNOCENCE PROJECT

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

I'VE APPEALED TO ALL STATE AGENCIES/COURTS, AND
NOW TO USDC/SDNY - 11 CIV 2987 (TPG) AND STILL AWAIT
A RESPONSE TO CPL § 30.30 (1a), WRIT OF HABEAS CORPUS

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). FOR A COURT ORDER TO BE ISSUED
RELEASING MY PERSON FROM CUSTODY IMMEDIATELY - FOR THE
INDICTMENTS TO BE DISMISSED/ACCUSATORY INSTRUMENTS TO
BE DISMISSED, FOR ALL GOVERNMENT OFFICIAL'S FOR THE CITY
OF NEW YORK, STATE OF NEW YORK INVOLVED IN MY UNLAWFUL,
ILLEGAL ARREST, DETAINMENT, CONVICTION, SENTENCING
TO BE PROSECUTED, TERMINATED FROM THEIR POSITIONS,
FOR MY PERSON TO BE AWARDED \$ 50,000,000.00 (FIFTY
MILLION DOLLARS AND ZERO CENTS) IN MONETARY COMPENSATION,
OR IN THE ALTERNATIVE, FOR MY PERSON TO BE RELEASED
IMMEDIATELY FROM CUSTODY PENDING AN APPEAL, AND IF
ACQUITTED OF WRONGFUL, UNLAWFUL ARREST/DETAINMENT/
CONVICTION TO BE AWARDED IN FULL THE ABOVE-STATED RELIEF.

On
these
claims**VI. Previous lawsuits:**

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☒ No ☐

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff Gaetano D'AtorreDefendants THE CITY OF NEW YORK, et al.,

2. Court (if federal court, name the district; if state court, name the county) USDC | SOUTHERN DISTRICT OF NEW YORK

3. Docket or Index number 10 CIV 0815 (JSR) (MHD)

4. Name of Judge assigned to your case JED S. RAKOFF / MICHAEL H. DOLINGER

5. Approximate date of filing lawsuit JANUARY 4TH, 2010

6. Is the case still pending? Yes ☒ No ☐

If NO, give the approximate date of disposition N/A

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) N/A

On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ☒ No ☐

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff Gaetano D'AtorreDefendants THE CITY OF NEW YORK, et al.,

2. Court (if federal court, name the district; if state court, name the county) BRONX County

3. Docket or Index number 305130/08

4. Name of Judge assigned to your case Justice SCHACHNER

5. Approximate date of filing lawsuit August 28, 2008

6. Is the case still pending? Yes ☒ No ☐
If NO, give the approximate date of disposition N/A
7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) N/A

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 25 day of October, 2011.

Signature of Plaintiff Gaetano D'Atto
Inmate Number 10A5728
Institution Address UPSTATE CORRECTIONAL FACILITY
P.O. BOX 2001
Malone, NY 12953

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 27 day of October, 2011, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: Gaetano D'Atto

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKGAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 1315 (LAP) (RWS)

- against -

NOTICE OF MOTION

Arresting officer- ID 897451, et al.

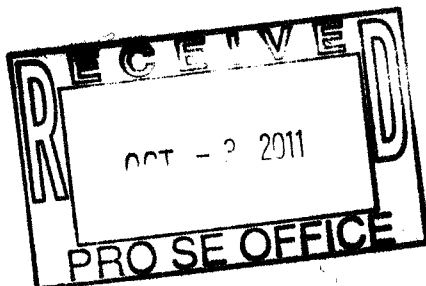
(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

PLEASE TAKE NOTICE that upon the annexed affirmation of GAETANO D'ATTORE,
(name)affirmed on August 20, 2011, and upon the exhibits attached thereto (delete if no
(date)

exhibits), the accompanying Memorandum of Law in support of this motion (delete if there is no

Memorandum of Law), and the pleadings herein, plaintiff defendant will move this Court, before
(circle one)LORETTA A. PRESKA, United States District Magistrate Judge, for an order
(Judge's name) (circle one)pursuant to Rule 15a of the Federal Rules of Civil Procedure granting (state what you want the
Judge to order): an order to Second Amend the complaint and summons to
properly name the defendants, and to dismiss most agents, servants,
employees, representatives from the complaint, and to allow plaintiff
60 days to complete amended (Second) complaint to file with this Court

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seneca, New York
(city) (state)Signature Gaetano D'AttoAddress FIVE POINTS C.F., 6600 State Route 96,August 20, 2011 P.O. Box 119, Remulus, N.Y. 14541
(month) (day) (year)Telephone Number N/AFax Number (if you have one) N/A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 1315 (CAP) (RWS)

- against -

**AFFIRMATION IN
SUPPORT OF MOTION**

Arresting Officer- ID 897451, et. al.,

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Gaetano D'Atto, affirm under penalty of perjury that:

(name)

1. I, Gaetano D'Atto, am the plaintiff/defendant in the above entitled action,

(name)

(circle one)

and respectfully move this Court to issue an order for a Second Amended Complaint
(state what you want the Judge to order)

2. The reason why I am entitled to the relief I seek is the following (state all your reasons

using additional paragraphs and sheets of paper as necessary): To properly name the defendants, and to dismiss most agents, servants, employees, representatives for the City of New York, State of New York, NYC/NYS Dept. of Corrections, and to allow for 60 Days to properly, concisely amend complaint & summons.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seneca, New York Signature Gaetano D'Atto
(city) (state) Address FIVE POINTS CORRECTIONAL FACILITY
August 20, 20 11 6600- State Route 96, P.O. Box 119, Romulus, N.Y. 14541
(month) (day) (year) Telephone Number N/A
Fax Number (if you have one) N/A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

- against -

Arresting officer- ID 897451, et.al,

10 Civ. 1315 (LAP) (RWS)

AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Gaetano D'Atto
(name)

, declare under penalty of perjury that I have

served a copy of the attached Notice of Motion, Affirmation in Support of Motion
(document you are serving)

upon Loretta A. Preska
(name of person served)

whose address is USDC/SDNY

500-Pearl Street, Rm 230 New York, New York 10007
(where you served document)

by United States Postal Service, Regular mail
(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated: Serena, New York
(town/city) (state)

August 20, 2011
(month) (day) (year)

Gaetano D'Atto

Signature

FIVE POINTS CORRECTIONAL FAC.
Address

6600 State Route 96, P.O. Box 119
City, State

Romulus, New York 14541
Zip Code

N/A

Telephone Number

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKGAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 1315 (LAP) (RWS)

- against -

NOTICE OF MOTION

Arresting officer- 1D 897451, et al.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

PLEASE TAKE NOTICE that upon the annexed affirmation of GAETANO D'ATTORE,
(name)affirmed on August 20, 20 11, and upon the exhibits attached thereto (delete if no
(date)

exhibits), the accompanying Memorandum of Law in support of this motion (delete if there is no

Memorandum of Law), and the pleadings herein, plaintiff/defendant will move this Court, beforeLORETTA A. PRESKA, United States District Magistrate Judge, for an order
(Judge's name) (circle one)pursuant to Rule 15a of the Federal Rules of Civil Procedure granting (state what you want the
Judge to order): an order to Second Amend the complaint and summons to
properly name the defendants, and to dismiss most agents, servants,
employees, representatives from the complaint, and to allow plaintiff
60 days to complete amended (Second) complaint to file with this Court

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seneca, New York Signature Gaetano D'Atto
(city) (state) Address FIVE POINTS C.F., 6600 State Route 96,
August 20, 20 11 P.O. Box 119, Romulus, N.Y. 14541
(month) (day) (year) Telephone Number N/A
Fax Number (if you have one) N/A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 1315 (CAP) (RWS)

- against -

**AFFIRMATION IN
SUPPORT OF MOTION**

Arresting officer- ID 897451, et al.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Gaetano D'Attore, affirm under penalty of perjury that:

(name)

1. I, Gaetano D'Attore, am the plaintiff/defendant in the above entitled action,

(name)

and respectfully move this Court to issue an order for a Second Amended Complaint
(state what you want the Judge to order)

2. The reason why I am entitled to the relief I seek is the following (state all your reasons

using additional paragraphs and sheets of paper as necessary): To properly name the defendants, and to dismiss most agents, servants, employees, representatives for the City of New York, State of New York, NYC/NYS Dept. of Corrections, and to allow for 60 days to properly, concisely amend complaint & summons.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seneca, New York

(city)

(state)

August, 20, 2011

(month)

(day)

(year)

Signature Gaetano D'Attore

Address FIVE POINTS CORRECTIONAL FACILITY

6600- State Route 96, P.O. Box 119, Romulus, N.Y. 14541

Telephone Number N/A

Fax Number (if you have one) N/A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

- against -

Arresting Officer- ID 897451, et al,

10 Civ. 1315 (LAP) (RWS)

AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Gaetano D'Atto
(name)

, declare under penalty of perjury that I have

served a copy of the attached Notice of Motion, Affirmation in Support of Motion
(document you are serving)

upon Loretta A. Preska
(name of person served)

whose address is USDC/SDNY

500-Pearl Street, Rm 230 New York, New York 10007
(where you served document)

by United States Postal Service, Regular mail
(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated: Serena, New York
(town/city) (state)
August 20, 2011
(month) (day) (year)

Gaetano D'Atto
Signature
FIVE POINTS CORRECTIONAL FAC.
Address
6600 State Route 96, P.O. Box 119
City, State
Romulus, New York 14541
Zip Code
N/A
Telephone Number

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKGAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 1315 (LAP) (RWS)

- against -

NOTICE OF MOTION

Arresting officer- ID 897451, et al.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

PLEASE TAKE NOTICE that upon the annexed affirmation of GAETANO D'ATTORE,
(name)affirmed on August 20, 2011, and upon the exhibits attached thereto (delete if no
(date)
exhibits), the accompanying Memorandum of Law in support of this motion (delete if there is noMemorandum of Law), and the pleadings herein, plaintiff defendant will move this Court, beforeLORETTA A. PRESKA, United States District Magistrate Judge, for an order
(Judge's name) (circle one)pursuant to Rule 15a of the Federal Rules of Civil Procedure granting (state what you want the
Judge to order): an order to Second Amend the complaint and summons to
properly name the defendants, and to dismiss most agents, servants,
employees, representatives from the complaint, and to allow plaintiff
60 days to complete amended (second) complaint to file with this Court

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seneca, New York Signature Gaetano D'Atto
(city) (state) Address FIVE POINTS C.F., 6600 State Route 96,
August 20, 2011 P.O. Box 119, Remulus, N.Y. 14541
(month) (day) (year) Telephone Number N/A
Fax Number (if you have one) N/A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 1315 (CAP) (RWS)

- against -

**AFFIRMATION IN
SUPPORT OF MOTION**

Arresting officer- ID 897457, et al.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Gaetano D'Atto, affirm under penalty of perjury that:
(name)

1. I, Gaetano D'Atto, am the plaintiff/defendant in the above entitled action,
(name) (circle one)
and respectfully move this Court to issue an order for a Second Amended Complaint
(state what you want the Judge to order)

2. The reason why I am entitled to the relief I seek is the following (state all your reasons using additional paragraphs and sheets of paper as necessary): To properly name the defendants, and to dismiss most agents, servants, employees, representatives for the City of New York, State of New York, NYC/NYS Dept. of Corrections, and to allow for 60 Days to properly, concisely amend complaint & summons.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seneca, New York
(city) (state)
August, 20, 20 11
(month) (day) (year)

Signature Gaetano D'Atto
Address FIVE POINTS CORRECTIONAL FACILITY
6600- State Route 96, P.O. Box 119, Romulus, N.Y. 14541
Telephone Number N/A
Fax Number (if you have one) N/A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

- against -

Arresting officer- ID 897451, et al,

10 Civ. 1315 (LAP) (RWS)

AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Gaetano D'Atto
(name)

, declare under penalty of perjury that I have
served a copy of the attached Notice of Motion, Affirmation in Support of Motion
(document you are serving)

upon Loretta A. Preska
(name of person served)

whose address is USDC/SDNY

500-Pearl Street, Rm 230 New York, New York 10007
(where you served document)

by United States Postal Service, Regular mail
(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated: Seneca, New York
(town/city) (state)

August, 20, 2011
(month) (day) (year)

Gaetano D'Atto

Signature

FIVE POINTS CORRECTIONAL FAC.

Address

6600 State Route 96, P.O. Box 119

City, State

Romeus, New York 14541

Zip Code

N/A

Telephone Number

PRO SE OFFICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE

500 PEARL STREET, ROOM 230

NEW YORK, NEW YORK 10007

J. MICHAEL McMAHON
CLERK OF COURT

IMPORTANT NOTICE

INCREASE IN FILING FEES

Increase in Fees

The filing fee for new civil actions (except *habeas corpus* proceedings) is increasing to \$350 and the filing fee for all appeals is increasing to \$455. The Deficit Reduction Act of 2005, Senate Bill S.1932, passed by the United States Congress and signed into law by the President on February 8, 2006, increases the fee for filing a civil action in all United States District Courts from \$250 to \$350 (amending 28 U.S.C. § 1914(a)) and increases the fee for filing an appeal to all United States Courts of Appeals from \$255 to \$455 (amending 28 U.S.C. § 1913).

Therefore, effective April 10, 2006, the filing fee for:

- (1) all civil actions (except *habeas corpus* actions*) in the United States District Courts will be \$350; and
- (2) all appeals to the United States Courts of Appeals will be \$455.

*The fee for filing a *habeas corpus* action in the United States District Courts will remain \$5.

Prisoner Authorization Form

Any inmate who seeks to have the filing fee for a new civil action in federal district court waived and proceed *in forma pauperis* under 28 U.S.C. § 1915 must sign the **new Prisoner Authorization form** that has been distributed to this facility. **The old forms (which refer to the \$250 filing fee) may not be used.** If you need the new form, or if you have any questions regarding the procedures of the Southern District of New York, you may contact the *Pro Se* Office by writing or calling (212) 805-0175 during business hours, 8:30am - 5:00pm, Monday - Friday (except federal holidays). Please note the *Pro Se* Office cannot accept collect calls.

2/23/2006

PRO SE OFFICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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500 PEARL STREET, ROOM 230
NEW YORK, NEW YORK 10007

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INSTRUCTIONS FOR FILING A PRISONER'S CIVIL RIGHTS COMPLAINT

Attached are a complaint form and an application to waive the filing fee for an action under 42 U.S.C. § 1983. The instructions for completing them are as follows:

1. **Caption:** The caption is located in the top left corner on the first page of the complaint. You, as the person filing the complaint, are the plaintiff. The people you allege have violated your rights and are responsible for your injuries should be named as the defendants. You should state the first and last name of each defendant and badge number, if appropriate. If you do not know the name of a defendant, you should name him or her as "John Doe" or "Jane Doe" and include some descriptive information about that defendant. For example, "John Doe Correctional Officer who worked the 8am-4pm shift on C-Block at Sing Sing Correctional Facility on January 1, 2003."
2. **Jury Trial:** You are entitled to a trial by jury, however, you lose your right to a jury trial if you do not ask for it early enough. You should indicate on the first page of the complaint whether or not you want a jury trial by checking either "yes" or "no" in the top right corner of the first page of the complaint. You can also demand a jury trial within 10 days of service of the answer. If you fail to request a jury trial, but later decide you want one, you may request a jury trial by filing a formal motion and explaining why you did not ask for one earlier. The judge, however, does not have to grant this motion.
3. **Contents:** The form should be fully completed. It can be typed or handwritten, but it must be legible. If you need more space to answer a question, use separate sheets of 8½ x 11-inch paper and attach them to your complaint. You are required to give facts, not legal arguments or citations. Each plaintiff must sign the complaint with an original signature (in ink or pencil). Photocopies of your signature cannot be accepted. The complaint need not be notarized.
4. **Copies:** You must send the Court the original complaint plus two identical copies. You should keep another copy for your records. Copies can be handwritten or typewritten but all copies must be identical to the original.
5. **Fee:** The filing fee is ~~\$150.00~~ ^{\$250.00}, payable to the "Clerk of Court, USDC, SDNY", by certified check, bank check, money order, major credit card, or cash (if your complaint is submitted in person). No personal checks are accepted.

6. **Inability To Pay The Fee:** If you cannot pay the fee, you may apply to the Court to waive the fee. Complete the enclosed Request to Proceed *In Forma Pauperis* and attach it to the original complaint. The caption of this application must be identical to the caption on the complaint. If you are currently confined in a jail, prison, or other correctional facility, you must also complete a Prisoner Authorization Form and attach it to the Request to Proceed *In Forma Pauperis*. Even if the Court grants your application to waive the filing fee, your inmate account may be debited in accordance with the Prison Litigation Reform Act of 1995, codified at 28 U.S.C. § 1915(b). If there is more than one plaintiff, each plaintiff must provide a separate Request to Proceed *In Forma Pauperis* and Prisoner Authorization Form.

7. **Filing:** When you have completed the forms, mail the original and two copies of the complaint, as well as the Request to Proceed *In Forma Pauperis* and Prisoner Authorization Form, if applicable, to the *Pro Se* Office at the address above.

8. **Serving the Complaint:** After the Court has issued a summons, copies of the summons and complaint must be served upon each of the defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. The plaintiff is responsible for ensuring that the defendants are served.

a) If you submit the filing fee with your complaint, you must arrange to have service made on your defendants. Professional process servers are listed in the telephone directory and in The New York Law Journal. Although professional process servers are recommended, they may be costly. You are not required to hire a professional to effect service if you have a trusted friend or family member willing to serve the papers for you. Anyone who is eighteen years or older and not a party to the action may qualify as an appropriate server.

b) If you seek to waive the fee and have been granted *in forma pauperis* status, you may have the United States Marshal Service serve the summons and complaint free of charge. If *in forma pauperis* status was not granted and you have paid the filing fee for the action, the United States Marshal Service may serve the summons and complaint for a fee. Please note that because of the large number of cases for which the United States Marshal Service is responsible, there may be significant delays in having your papers served by the Marshal Service.

c) Whether you have paid the filing fee or have been granted *in forma pauperis* status, you may wish to take advantage of the Waiver of Service provision, Fed. R. Civ. P. 4(d), which permits the plaintiff to serve by first-class mail. Additional information about service will be sent to you by the *Pro Se* Office when your summons has been issued by the Court.

9. **Questions:** If you have any questions, please contact the *Pro Se* Office, (212) 805-0175, during business hours, 8:30am - 5:00pm, Monday - Friday (except federal holidays). Please note that the *Pro Se* Office cannot accept collect calls.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

COMPLAINT

under the
Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)

Jury Trial: ☐ Yes ☐ No
(check one)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name _____
ID # _____
Current Institution _____
Address _____

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 2 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 3 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 4 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 5 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur? _____

B. Where in the institution did the events giving rise to your claim(s) occur? _____

C. What date and approximate time did the events giving rise to your claim(s) occur? _____

D. Facts: _____

What happened to you?

Who did you see?

Was anyone else involved?

Who else saw what happened?

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ____ No ____

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

3. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ____ No ____ Do Not Know ____

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ____ No ____ Do Not Know ____

If YES, which claim(s)? _____

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ____ No ____

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ____ No ____

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

1. Which claim(s) in this complaint did you grieve? _____

2. What was the result, if any? _____

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. _____

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: _____

2. If you did not file a grievance but informed any officials of your claim, state who you

V. Relief:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

VI. Previous lawsuits:

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ____ No ____

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ____ No ____

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this ____ day of _____, 20__.

Signature of Plaintiff _____

Inmate Number _____

Institution Address _____

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this ____ day of _____, 20__, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: _____

Gaetano D'Atore, Dir. No. 10A5728
UPSTATE CORRECTIONAL FACILITY
P.O. BOX 2001
Malone, NY 12953

October 25, 2011
Claim No. 10 CIV 1315 (LAP) (RWS)

TO: CLERK OF THE COURT
USDC/SDNY, D.P.M. Court House
500-Pearl Street, Rm. 230
New York, NY 10007

Dear Sir/Madam,

PLEASE offer your service's to me once again, as I humbly request for this office/Court to do so, as I am to be indigent incarcerated in (STU) status for the next 13 months, and have no other persons to help/assist me.

Please, make all necessary copies of the Amended Complaint, for the Court, and approx. two more, one for me, and one for the Attorney General that I will be to mail or if this office may do for me, I'd appreciate it. I thank this office/court for its consideration in this regard.

Thank You,

Sincerely,

Gaetano D'Atore

10A5728, B, Bl, 10B cell